



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2018-0233; FRL-9982-44-Region 9]

Air Plan Approval; California; San Diego County Air Pollution Control District;

Stationary Source Permits and Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve and conditionally approve revisions to the San Diego County Air Pollution Control District (SDAPCD or “District”) portion of the California State Implementation Plan (SIP). These revisions concern the District’s New Source Review (NSR) permitting program for new and modified sources of air pollution under section 110(a)(2)(C) and part D of title I of the Clean Air Act (CAA or the Act). This action updates the SDAPCD’s applicable SIP with current SDAPCD permitting rules.

DATES: These rules will be effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2018-0233. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will

be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ya-Ting Tsai, EPA Region IX, (415) 972-3328, *Tsai.Ya-Ting@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Proposed Action

On June 25, 2018 (83 FR 29483) the EPA proposed to approve and conditionally approve the following rules into the California SIP.

Rule #	Rule Title	Adopted Date	Submitted Date
11	Exemptions from Rule 10 Permit Requirements	05/11/2016	08/22/2016
20	Standards for Granting Permits	06/10/1986	11/21/1986
20.1	New Source Review – General Provisions	04/27/2016	06/17/2016
20.2*	New Source Review – Non-Major Stationary Sources	04/27/2016	06/17/2016
20.3*	New Source Review – Major Stationary Sources and PSD Stationary Sources	04/27/2016	06/17/2016
20.4*	New Source Review – Portable Emission Units	04/27/2016	06/17/2016
20.6	Standards for Permit to Operate Air Quality Analysis	04/27/2016	06/17/2016
24	Temporary Permit to Operate	06/29/2016	08/22/2016

* The following subsections of the Rules 20.2-20.4 were not submitted to the EPA for inclusion in the San Diego SIP: Rule 20.2 Subsections (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3); Rule 20.3 Subsections (d)(1)(vi), (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3); and Rule 20.4 Subsections (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv), (d)(2)(v)(B), (d)(3) and (d)(5).

We determined that these rules generally comply with most applicable CAA requirements, but that they do not satisfy the requirements at 40 CFR 51.165(a)(6) and (7) and section 173(a)(4) of the Act. First, the submitted rules do not contain recordkeeping and reporting requirements for sources using an actual-to-potential-actual test to determine applicability of major source requirements. Second, the rules do not incorporate the requirement at section 173(a)(4) of the Act, which states that nonattainment NSR permit programs shall provide that permits to construct and operate may not be issued if the EPA Administrator has determined that the applicable implementation plan for the nonattainment area is not being adequately implemented. These deficiencies are the basis for the EPA's final conditional approval of the District's June 17, 2016 submittal. The District and the California Air Resources Board (CARB) have committed to adopt and submit revisions to address the identified

deficiencies by July 31, 2019, consistent with the requirements at CAA section 110(k)(4) for conditional approval. Based on our evaluation of the submitted rules, the EPA proposed to fully approve the SDAPCD's August 22, 2016 and November 21, 1986 submittals (consisting of Rules 11, 20, and 24), and to conditionally approve the District's June 17, 2016 submittal (consisting of Rules 20.1, 20.2, 20.3, 20.4, and 20.6).

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment. This comment raised issues outside the scope of this rulemaking, including renewable energy spending in other countries. This comment is not germane to our evaluation of these SDAPCD NSR Rules.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) and (k)(4) of the Act, the EPA is approving and conditionally approving these rules into the California SIP as proposed. While we cannot grant full approval of the June 17, 2016 submittal at this time, the SDAPCD and CARB have satisfactorily committed to address deficiencies listed in our proposed action by providing the EPA with a SIP submittal by July 31, 2019, which will include specific rule revisions that would adequately address the deficiencies. If the State submits the rule revisions that it has committed to submit by this deadline and the EPA approves the submission, then these deficiencies will be cured. However, if the State fails to submit these revisions within the required timeframe, the conditional approval will become a disapproval, and the EPA will issue a finding of disapproval. The EPA is not required to propose the finding of disapproval. A finding

of disapproval would start an 18-month clock to apply sanctions under CAA section 179(b) and a two-year clock for a Federal implementation plan under CAA section 110(c)(1).

In this action, the EPA is also correcting an error in the existing regulatory text. On June 21, 2017 (82 FR 28240) we approved regulatory materials from CARB's submittal dated August 22, 2016 into 40 CFR 52.220 at paragraph (c)(488). We inadvertently provided an incorrect date of April 21, 2016, for the CARB submittal in the June 21, 2017 regulatory text. As this action addresses additional materials that were submitted on August 22, 2016, we are taking action today to correct this error under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act, which authorizes agencies, upon finding "good cause," to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this correction is unnecessary because this action merely corrects an inadvertent error in the regulatory text added by the June 21, 2017 rulemaking, and is consistent with that action as described in the preamble. The EPA can identify no particular reason why the public would be interested in having the opportunity to comment on the correction prior to this action being finalized, since this action does not change the EPA's analysis or overall action as stated in the June 21, 2017 rulemaking. This correction will become effective on the same date as the other changes to the regulatory text, as set out above.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the San Diego Air Pollution Control District rules described in the amendments to

40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law

104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United

States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Administrative practice and procedure, Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: August 6, 2018.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart F – California

2. Section 52.220 is amended by adding paragraphs (c)(6)(i)(E), (c)(51)(vii)(E), (c)(64)(i)(B), (c)(171)(i)(E), and (c)(241)(i)(A)(8), revising paragraph (c)(488) introductory text, and adding paragraphs (c)(488)(i)(A)(3) and (4) and (c)(508) to read as follows:

§52.220 Identification of plan—in part.

*	*	*	*	*
(c)	*	*	*	
(6)	*	*	*	
(i)	*	*	*	

(E) Previously approved on September 22, 1972 and now deleted with replacement in paragraph (c)(171)(i)(E)(1) of this section, Rule 20.

*	*	*	*	*
(51)	*	*	*	
(vii)	*	*	*	

(E) Previously approved on July 6, 1982 in paragraph (c)(51)(vii)(C) of this section, and now deleted with replacement in paragraph (c)(488)(i)(A)(3) of this section, Rule 11.

*	*	*	*	*
(64)	*	*	*	
(i)	*	*	*	

(B) Previously approved on April 14, 1981 in paragraph (c)(64)(i)(A) of this section, and now deleted with replacement in paragraph (c)(508)(i)(A) of this section, Rules 20.1, 20.2, 20.3, 20.4,

and 20.6.

* * * * *

(171) * * *

(i) * * *

(E) San Diego County Air Pollution Control District.

(I) Rule 20, “Standards for Granting Permits,” revision adopted on June 10, 1986.

* * * * *

(241) * * *

(i) * * *

(A) * * *

(8) Previously approved on October 24, 2007 in paragraph (c)(241)(i)(A)(6) of this section, and now deleted with replacement in paragraph (c)(488)(i)(A)(4) of this section, Rule 24, “Temporary Permit to Operate,” adopted on March 20, 1996.

* * * * *

(488) New and amended regulations were submitted on August 22, 2016 by the Governor’s designee.

(i) * * *

(A) * * *

(3) Rule 11, “Exemptions from Rule 10 Permit Requirements,” revision adopted on May 11, 2016.

(4) Rule 24, “Temporary Permit to Operate,” revision adopted on June 29, 2016.

* * * * *

(508) New or amended regulations for the following APCD was submitted on June 17, 2016 by the Governor’s designee.

(i) *Incorporation by reference.* (A) San Diego County Air Pollution Control District.

(1) Rule 20.1, “New Source Review – General Provisions,” revision adopted on April 27, 2016.

(2) Rule 20.2, “New Source Review – Non-Major Stationary Sources” (except subsections (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3)), revision adopted on April 27, 2016.

(3) Rule 20.3, “New Source Review – Major Stationary Sources and PSD Stationary Sources” (except subsections (d)(1)(vi), (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3)), revision adopted on April 27, 2016.

(4) Rule 20.4, “New Sources Review – Portable Emission Units” (except subsections (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv), (d)(2)(v)(B), (d)(3) and (d)(5)), revision adopted on April 27, 2016.

(5) Rule 20.6, “Standards for Permit to Operate Air Quality Analysis,” revision adopted on April 27, 2016.

3. Section 52.248 is amended by adding paragraph (e) to read as follows:

§52.248 Identification of plan—conditional approval.

* * * * *

(e) The EPA is conditionally approving California State Implementation Plan (SIP) revisions submitted on June 17, 2016, updating New Source Review permitting rules for the San Diego Air Pollution Control District (SDAPCD). The conditional approval is based on a commitment from the State to submit a SIP revision that will correct identified deficiencies in the following rules for the SDAPCD:

(1) Rule 20.1, “New Source Review – General Provisions”;

(2) Rule 20.2, “New Source Review – Non-Major Stationary Sources” (except subsections (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3));

(3) Rule 20.3, “New Source Review – Major Stationary Sources and PSD Stationary Sources” (except subsections (d)(1)(vi), (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3));

(4) Rule 20.4, “New Sources Review – Portable Emission Units” (except subsections (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv), (d)(2)(v)(B), (d)(3) and (d)(5)); and

(5) Rule 20.6, “Standards for Permit to Operate Air Quality Analysis.” If the State fails to meet its commitment by July 31, 2019, the conditional approval is treated as a disapproval.
[FR Doc. 2018-21470 Filed: 10/3/2018 8:45 am; Publication Date: 10/4/2018]